

IN THE TRIAL COURT FOR THE STATE OF ALASKA
SECOND JUDICIAL DISTRICT AT NOME

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
EDWARD TOCKTOO,)
)
Defendant.)

FILED in the Trial Courts
State of Alaska, Second District

JUN 5 1998

By _____ Deputy

Case No: 2NO-S98-00038 CR

CERTIFICATION

I certify that this document and its attachments do not contain (1) the name of a victim of a sexual offense listed in AS 12.61.140 or (2) a residence or business address or telephone number of a victim of or witness to any offense unless it is an address used to identify the place of the crime or it is an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

MOTION TO WITHDRAW AS COUNSEL AND
ALTERNATIVELY, MOTION FOR CONTINUANCE
OF TRIAL AND REQUEST FOR RULE 45 CALCULATION

Counsel for defendant moves this court for an order withdrawing as attorney for defendant.

Counsel represents the following: I was appointed as substitute counsel on May 29, 1998.

I received the Public Defender Agency file on June 1, 1998, and have reviewed it. I spoke with defendant in person at Anvil Mountain Correctional Center on June 5, 1998. At that time he expressed his desire to waive his right to counsel and to represent himself at trial June 15, 1998.

This waiver of counsel will require the court to inquire of the defendant, and counsel requests the matter be set on for such inquiry on June 5, 1998 at 1:30 p.m.

If the defendant's waiver of counsel is not accepted, and the Motion to Withdraw is denied,

MOTION TO WITHDRAW AS COUNSEL AND ALTERNATIVELY, MOTION
FOR CONTINUANCE OF TRIAL AND REQUEST FOR RULE 45 CALCULATION
State of Alaska vs. Edward Tocktoo, Case No: 2NO-98-00038 CR

Page 1

000279

counsel requests a one month continuance of the trial in order to adequately prepare. Counsel has a previously calendared, date-certain divorce trial (continued twice before) scheduled for June 17 in Naknek. One month continuance will suffice to prepare for this trial, and will result in the minimum adverse impact on the defendant.

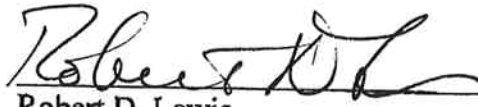
Regardless of the court's decision on withdrawal, the defendant requests the court calculate the current Criminal Rule 45 expiration date. The defendant believes his speedy trial rights have been violated.

Counsel calculates the time expired under Rule 45 as follows:

With a January 24, 1998 arrest date (per the defendant), there are 7 days in January, 28 days in February, 31 days in March, and 20 days in April, (when substantive motions were filed on the defendant's behalf, tolling the rule) resulting in 86 days through April 20. The court ruled on the motions on May 22, starting the rule running again, resulting in an additional 9 days in May and 5 days in June to date.

By counsel's calculation 100 days have expired on the rule through June 5, 1998. A trial June 15 would result in trial occurring on the 110th day.

DATED at Anchorage, Alaska this 5th day of June, 1998.


Robert D. Lewis
Attorney for Defendant

ORDER

lodged 6-5-98

Defendant's Motion for Withdrawal of Counsel is GRANTED/DENIED.

Trial date shall be _____

MOTION TO WITHDRAW AS COUNSEL AND ALTERNATIVELY, MOTION
FOR CONTINUANCE OF TRIAL AND REQUEST FOR RULE 45 CALCULATION
State of Alaska vs. Edward Tocktoo, Case No: 2NO-98-00038 CR

_____ days have expired in Rule 45 to date.

DATED at Nome, Alaska this _____ day of June, 1998.

Ben Esch
Judge of the Superior Court

CERTIFICATE OF SERVICE

This is to certify that on the 5th day of June, 1998, a true and correct copy of the foregoing document was Hand-Delivered to the following:

John Vacek
District Attorney - Nome
P. O. Box 160
Nome, Alaska 99762

By: _____
Robert D. Lewis

C:\MyFiles\OPA\Tocktoo-Edward\withdraw-continue mot.wpd

MOTION TO WITHDRAW AS COUNSEL AND ALTERNATIVELY, MOTION
FOR CONTINUANCE OF TRIAL AND REQUEST FOR RULE 45 CALCULATION
State of Alaska vs. Edward Tocktoo, Case No: 2NO-98-00038 CR

Page 3